



LAWS

Relating to

**STATE CONTRACTS, LABOR AND MATERIAL
CLAIMS, AND EXECUTIONS ON MONEYS
DUE BY PUBLIC AGENCIES
As of December 1999**

**Issued by
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
2000**



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Covering State Legislation through the 1999 Regular Session of the Legislature

RELIEF OF BIDDERS

RELIEF OF BIDDERS

Public Contract Code Sections

DIVISION 2. GENERAL PROVISIONS

PART 1. ADMINISTRATIVE PROVISIONS

CHAPTER 5. RELIEF OF BIDDERS

Definitions

5100. (a) "Public entity" means the state, Regents of the University of California, a county, city and county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

(b) "Bid" means any proposal submitted to a public entity in competitive bidding for the construction, alteration, repair, or improvement of any structure, building, road or other improvement of any kind.

Action to Recover Forfeiture

5101. (a) A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court.

(b) If an awarding authority for the state consents to relieve a bidder of a bid because of mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required by Section 5103. The report shall be available for inspection as a public record. In the case of the University of California or a California State

University, the report shall be filed with the regents and the trustees, respectively, and shall be available as a public record.

Time of Action

5102. The complaint shall be filed, and summons served on the director of the department or the chief of the division or other head of the public entity under which the work is to be performed or an appearance made, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

Grounds for Recovery

5103. The bidder shall establish to the satisfaction of the court that:

(a) A mistake was made.

(b) He or she gave the public entity written notice within five days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.

(c) The mistake made the bid materially different than he or she intended it to be.

(d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

Claim

5104. Other than the notice to the public entity, no claim is required to be filed before bringing the action.

Further Bidding Prohibited

5105. A bidder who claims a mistake or who forfeits his or her bid security shall be prohibited from participating in further bidding on the project on which the mistake was claimed or security forfeited.

Award of Next Bidder

5106. If the public entity deems it is for its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest bidder.

If the second lowest bidder fails or refuses to execute the contract, the public entity may likewise award it to the third lowest bidder.

On the failure or refusal of the second or third lowest bidder to whom a contract is so awarded to execute it, his or her bidder's security shall be likewise forfeited.

Preference

5107. In all actions brought under the provisions of this chapter, all courts wherein such actions are or may hereafter be pending, shall give such actions preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

STATE CONTRACT ACT**Public Contract Code Sections****PART 2. CONTRACTING BY STATE AGENCIES****CHAPTER 1. STATE CONTRACT ACT****Article 1. Scope of Chapter and General Provisions*****Short Title***

10100. This part may be cited as the State Contract Act.

Exceptions

10101. (a) Contracts for the purchase of supplies or materials, which are purchased pursuant to Chapter 2 (commencing with Section 10290), Part 2, Division 2, of the Public Contract Code, are not subject to this part, even though the seller is required to perform some incidental work or service in connection with the delivery of the material or supplies.

(b) Contracts for which emergency work or remedial measures are required are not subject to this part if the work or remedial measures are necessary to immediately avert, alleviate, repair, or mitigate destruction of property caused by the accidental or unplanned release of toxic substances and are necessary to protect the health, safety, and welfare of the general public.

10102. Improvements on the property of the state on the waterfront of the City and County of San Francisco under the jurisdiction of the Board of State Harbor Commissioners are not subject to this part.

10103. Work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority, is not subject to this part, whether or not done under public supervision or paid for in whole or part out of public funds.

10103.5. Work performed by prisoners pursuant to an order by the Director of the Department of

Corrections or by the Prison Industry Authority is not subject to this part, provided that the total cost of a project for the construction of new, previously unoccupied prison facilities or additions to an existing facility shall not exceed fifty thousand dollars (\$50,000) unless it is first approved by the Public Works Board.

"Mobilization"

10104. As used in this part, "mobilization" includes preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all offices, buildings and other facilities necessary for work on the project, and for all other work and operations which must be performed or costs incurred prior to beginning work on the various items on the project site.

"Project"

10105. (a) As used in this part, "project" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed a total cost calculated pursuant to subdivision (b).

(b) The total cost limit for calendar year 1993 shall be one hundred thousand dollars (\$100,000), and at two year intervals thereafter, the total cost limit shall be adjusted upward or downward by the Director of Finance to reflect the percentage change in the

annual California Construction Index as used by the Department of General Services. The amount shall be rounded off to the nearest one thousand dollar (\$1,000) figure.

"Department"

10106. "Department," as used in this part, means (a) the Department of Water Resources as to any project under the jurisdiction of that department, (b) the Department of General Services as to any project under the jurisdiction of that department, (c) the Department of Boating and Waterways as to any project under the jurisdiction of that department pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, (d) the Department of Corrections with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, and (e) the Department of Transportation as to all other projects.

"Director," as used in this part, means the director of each department as defined herein respectively.

Jurisdiction

10107. Whenever provision is made by law for any project which is not under the jurisdiction of the Department of Water Resources, the Department of Boating and Waterways pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, the Department of Corrections pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, or the Department of General Services, the project shall be under the sole charge and direct control of the Department of Transportation.

Execution of Work by State Agency

10108. Where the nature of the work in the opinion of the department is such that its services in connection therewith are not required, it may authorize the carrying out of the project directly by the state agency concerned therewith if the estimated cost does not exceed two hundred fifty thousand dollars (\$250,000), except that the two hundred fifty thousand dollars (\$250,000) limitation shall not apply to a project of a district agricultural association or a project of the State Lands Commission.

If the estimated total cost of any construction project or work carried out under this section exceeds twenty-five thousand dollars (\$25,000), the district or agency shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids; provided, however, that the director may authorize the district or agency to carry out work in excess of twenty-five thousand dollars (\$25,000) under the provisions of this section by day labor if he deems that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state; however, in no event shall the amount of work performed by day labor under this section exceed the sum of fifty thousand dollars (\$50,000) in the case of district agricultural association fair projects, or thirty-five thousand dollars (\$35,000) in other cases.

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Material Sites, Fish and Game

10109. Any notice inviting bids on a project which specifies locations of possible materials, such as a borrow pit or gravel bed, for use in the proposed project which would be subject to Section 1601 or 1603 of the Fish and Game Code shall include any conditions or modifications established pursuant to Section 1601.

Historic Restoration

10110. Where the nature of the work is historic restoration for the state park system, as determined jointly by the director and the Director of Parks and Recreation, the department may authorize the carrying out of the project directly by the Department of Parks and Recreation.

If the estimated total cost of any construction project or work carried out under this section exceeds twenty-five thousand dollars (\$25,000), the Department of Parks and Recreation shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. However, the director may authorize the Department of Parks and Recreation to carry out work in excess of twenty-five thousand dollars (\$25,000) under the provisions of this section by day labor if the director determines, in consultation with the Director of Parks and Recreation, that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state. The Department of Parks and Recreation shall establish, by regulation, criteria to be considered by the Department of Parks and Recreation in requesting authorization from the director to perform all or part of a project by day labor.

Article 1.5. Minority and Women
Business Participation Goals for State
contracts

Statewide Goals

10115. (a) The Legislature finds and declares all of the following:

(1) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal

initiative and individual judgment be assured. The preservation and expansion of that competition is basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of minority, women, and disabled veteran business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of minority, women, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total number of contracts or subcontracts for commodities, supplies, technology, property, and services are awarded to minority, women, and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state.

(2) The opportunity for full participation in our free enterprise system by minority, women, and disabled veteran business enterprises is essential if this state is to attain social and economic equality for those businesses and improve the functioning of the state economy.

(3) State agencies which have established short- and long-range minority, women, and disabled veteran participation goals are awarding 23 percent or more of their contracts to these business enterprises.

(4) It is in the state's interest to expeditiously improve the economically disadvantaged position of minority, women, and disabled veteran business enterprises.

(5) The economic position of these businesses can be improved by providing long-range substantial goals for procurement by state agencies of commodities, professional services, and construction work from minority, women, and disabled veteran businesses.

(6) Procurement by state agencies of goods and services from these businesses also benefits the state agencies and the citizens of the state by encouraging the expansion of the number of vendors for procurements, thereby encouraging competition among the vendors and promoting economic efficiency in the process.

(b) It is the purpose of this article to do all of the following:

(1) Encourage greater economic opportunity for minority, women, and disabled veteran business enterprises.

(2) Promote competition among state agencies in order to enhance long-term economic efficiency in the procurement of construction, commodities, and professional services contracts.

(3) Clarify and expand the program for the procurement by state agencies of commodities, professional services, and construction work from minority, women, and disabled veteran business enterprises.

(c) Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 15 percent for minority business enterprises, not less than 5 percent for women business enterprises and 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department, as defined by Section 10115.1, pursuant to this article.

Definitions

10115.1. As used in this article, the following definitions apply:

(a) "Awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to enter into contracts on behalf of the State of California.

(b) "Contract" includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(c) "Contractor" means any person or persons, regardless of race, color, sex, ethnic origin or ancestry, or any firm, partnership, corporation, or combination thereof, whether or not a minority or women business enterprise, who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California.

(d) "Minority," for purposes of this section, means a citizen or lawful permanent resident of the United States who is an ethnic person of color and who is: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including the Northern Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh); or any other group of natural persons identified as minorities in the respective project specifications of an awarding

department or participating local agency.

(e) "Minority business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more minorities or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minorities.

(2) A business whose management and daily operations are controlled by one or more minorities who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(f) "Women business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more women.

(2) A business whose management and daily operations are controlled by one or more women who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(g) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

Bidder Responsiveness

10115.2. (a) In awarding contracts to the lowest responsible bidder, the awarding department shall consider the

efforts of a bidder to meet minority business enterprise, women business enterprise, and disabled veteran business enterprise goals set forth in this article. The awarding department shall award the contract to the lowest responsible bidder meeting or making good faith efforts to meet these goals.

(b) A bidder shall be deemed to have made good faith efforts upon submittal, within time limits specified by the awarding department, of documentary evidence that all of the following actions were taken:

(1) Contact was made with the awarding department to identify minority, women, and disabled veteran business enterprises.

(2) Contact was made with other state and federal agencies, and with local minority, women, and disabled veteran business enterprise organizations to identify minority, women, and disabled veteran business enterprises.

(3) Advertising was published in trade papers and papers focusing on minority, women, and disabled veteran business enterprises, unless time limits imposed by the awarding department do not permit that advertising.

(4) Invitations to bid were submitted to potential minority, women, and disabled veteran business enterprise contractors.

(5) Available minority, women, and disabled veteran business enterprises were considered.

Monitoring of Goal Adherence

10115.3. (a) The awarding department shall establish a method of monitoring adherence to the goals specified in this article.

(b) The awarding department shall adopt rules and regulations for the purpose of implementing this article. Emergency regulations consistent with this section may be adopted.

Use of Existing Resources

10115.4. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small and Minority Business, the Minority Business Development Agency, and the Small Business Administration.

Annual Report

10115.5. (a) Notwithstanding Section 7550.5 of the Government Code, on January 1 of each year, each awarding department shall report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran business enterprises in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation by minority, women, and disabled veteran business enterprises for the following categories of contracts:

- (1) Construction.
- (2) Purchases of materials, supplies, and equipment.
- (3) Professional services.
- (4) All contracts for a dollar amount of less than twenty-five thousand dollars (\$25,000).

(b) If the established goals are not being met, the awarding department shall report the reasons for its inability to achieve the standards and identify remedial steps it shall take.

Continued Contract Validity

10115.6. Notwithstanding any other provision of this article, the failure of an awarding department to meet the goals established under this article shall not affect the validity or enforceability of any contract or any bonds, notes, or other obligations issued by the awarding department to provide for the payment of any contract subject to this article.

Discrimination Not Authorized

10115.7. (a) Nothing in this article shall be construed to authorize any awarding department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry.

(b) Nothing in this article shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

Severability Provision

10115.8. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Penalties for Fraud

10115.10. (a) It shall be unlawful for a person or firm to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee

who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person or firm in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars (\$200,000) for each additional, or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars (\$20,000) for each additional or subsequent violation.

[c] Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties

imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person or firm being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

Application of Participation Goals

10115.11. (a) Notwithstanding any other provision of this article, statewide participation goals for contracts let by the Department of Corrections shall be exclusive of inmate day labor contracts.

(b) The goals established in this article shall also apply to the overall dollar amount expended each year on contracts let by the California

Department of Corrections for the purposes of services, maintenance, and supplies excluding contracts for services for inmate medical needs.

***Information Required in Bids;
Application of Subletting and
Subcontracting Fair Practices Act***

10115.12. (a) Any awarding department taking bids in connection with the award of any contract shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

***Participation Goals for Contracts for
Purchase of General Public
Advertisements***

10115.13. Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity for the purchase of general public advertisements shall have statewide participation goals of not less than 15 percent for minority business enterprises, not less than five percent for women business enterprises, and three percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding state agency, department, offices, or other state governmental entity.

***Acceptance of Submission by Bidder of
Minority, Women, and Disabled
Veteran Business Enterprise Utilization
Plan; Audits; Disapproval of Plan***

10115.15. (a) Notwithstanding Section 10115.2, when awarding contracts for materials, supplies, or equipment, including electronic data processing goods and services, an awarding department shall accept the submission by a bidder of a minority, women, and disabled veteran business enterprise utilization plan that has been approved prior to the solicitation due date by the Department of General Services. A business utilization plan shall be considered approved by the Department of General Services as of the date submitted to the department so long as the plan meets the minimum criteria established in paragraphs (1) to (12), inclusive, and shall be valid for a period of one year, unless the department has audited the utilization plan, as authorized under subdivision

(b), and disapproves it for reasons specified under subdivision (c). The decision of whether to establish a minority, women, and disabled veteran business enterprise utilization plan shall be at the option of the vendor. If a bidder cites an approved utilization plan in response to the minority, women, and disabled veteran business enterprise participation requirements of a solicitation that calls for 15 percent minority-owned, 5 percent women-owned, and 3 percent disabled veteran-owned business participation, then that utilization plan shall be considered responsive to the participation goals of the solicitation document. If a solicitation specifies higher participation goals than those in the bidder's utilization plan, the bidder shall meet the goals in the solicitation or make a good-faith effort to do so. At a minimum, the utilization plan shall include the following information:

(1) A statement of the vendor's minority, women, and disabled veteran business enterprise utilization plan, including the primary objectives of the utilization plan.

(2) An explanation showing sufficient business reasons why the vendor did not meet minority, women, and disabled veteran business enterprise participation goals set forth in the vendor's minority, women, and disabled veteran business utilization plan submitted to, and approved by, the Department of General Services in the previous year, if applicable. Further, if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, the vendor shall also identify remedial steps it will take to meet the goals in the current utilization plan.

(3) A statement of the vendor's minority, women, and disabled veteran business utilization goals for the succeeding year. At a minimum, these utilization goals shall be equal to the

statewide participation goals set forth in subdivision (c) of Section 10115.

(4) Estimated total dollars to be subcontracted by the vendor for sales within the United States for the succeeding year.

(5) Estimated total dollars to be subcontracted by the vendor for sales within the State of California for the succeeding year.

(6) Total dollars expressed as a percentage of the amount estimated pursuant to paragraph (4), intended to be subcontracted with each of the following:

(A) Minority business enterprises.

(B) Women business enterprises.

(7) Total dollars, expressed as a percentage of the amount estimated pursuant to paragraph (5), intended to be subcontracted with disabled veteran-owned business enterprises.

(8) A representative listing of the products and services that the vendor anticipates subcontracting, including an identification of the types of subcontracting planned for minority, women, and disabled veteran business enterprises.

(9) The name of the individual employed by the vendor who will administer the vendor's utilization plan, including a description of the duties of the individual.

(10) A description of the efforts that the vendor will undertake to ensure that minority, women, and disabled veteran business enterprises will have an equitable opportunity to compete for contracts.

(11) A listing of the records and reports that the vendor will maintain to demonstrate the practices and procedures that have been adopted to comply with the requirements and goals of the utilization plan.

(12) Affirmation that the vendor met the statewide minority, women, and disabled veteran business enterprise utilization goals for the previous year, if applicable.

(b) The Department of General Services shall conduct random audits of the submitted utilization plans to determine compliance with this article, and shall retain on file all submitted utilization plans for auditing purposes. During any audit of a submitted utilization plan, the Department of General Services may ask a vendor to submit a list of all the minority, women, and disabled veteran business enterprises included as subcontractors in the vendor's plan for the previous year. This information shall remain confidential. Nothing in this section shall be construed to require the Department of General Services to audit all of the minority, women, and disabled veteran business enterprise utilization plans submitted by individual vendors. The Department of General Services may establish appropriate fees to cover the actual costs of conducting random audits and retaining on file all submitted plans.

(c) (1) At any time, the Department of General Services may disapprove a vendor's minority, women, and disabled veteran business enterprise utilization plan for any of the following reasons:

(A) The utilization plan fails to evidence a vendor's intention to comply fully with the statewide minority, women, and disabled veteran business enterprise goals for the succeeding year, as indicated by failure of the utilization plan to contain the information specified in subdivision (a).

(B) The utilization plan fails to evidence sufficient business reasons for failure to achieve the minority, women, and disabled veteran business enterprise goals set forth in a utilization plan submitted in the previous year, if applicable.

(C) The utilization plan fails to evidence sufficient remedial steps the vendor will take if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, if applicable.

(2) If a vendor's utilization plan is disapproved, the vendor may not submit a new utilization plan to the department for a period of one year from the date of disapproval. Prior to disapproval of a vendor's utilization plan, the vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(3) A vendor that submits a minority, women, and disabled veteran business utilization plan that is approved by the Department of General Services, and that is subsequently awarded a contract to which the vendor would not otherwise have been entitled, and who fails to evidence intention to fully comply with the minority, women, and disabled veteran business enterprise goals in the utilization plan, or fails to evidence sufficient business reasons for failing to achieve the minority, women, and disabled veteran business enterprise goals set forth in the utilization plan, shall:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

Article 2. Plans and Specifications

Contracts for Public Works

10120. Before entering into any contract for a project, the department shall prepare full, complete, and accurate plans and specifications and estimates of cost, giving such directions as will enable any competent mechanic or other builder to carry them out.

Approval of Plans, Etc.

10121. The original draft or a certified copy of the plans, specifications, and estimates of cost shall be filed permanently in the office of the department before further action is taken.

Contracts and Day's Labor

10122. Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to this part, except that it may be done by day's labor under the direction of the department, by contract upon informal bids, or by a combination thereof:

(a) In case of emergency due to the failure or threat of failure of any bridge or other highway structure.

(b) In case of emergency due to the failure or threat of failure of any dam, reservoir, aqueduct, or other water facility or facility appurtenant thereto.

(c) In case of emergency due to damage to a state-owned building or any other state-owned real property or improvements located thereon, by an act of God, including but not limited to damage by storm, flood, fire or earthquake, for work and remedial measures which are required immediately.

(d) At any time after the approval of plans, specifications and estimates of cost, if the director deems the advertising or award of a contract, the acceptance of any bid, or the acceptance of any further bids after the rejection of all submitted bids, is not in the best interests of the state.

Department of Corrections, Day Labor

10122.5. For the purposes of Section 10122, all day labor utilized by the Department of Corrections shall be performed by individuals who are represented by a duly authorized employee representative unless individuals with that qualification are not reasonably available.

Day's Labor Limit

10122.6. Notwithstanding the project cost limit provided in Section 10105, work in excess of twenty-five thousand dollars (\$25,000) which would otherwise constitute a project, shall not be done by day's labor unless the requirements of Section 10122 are met.

Informal Bids

10123. Contracts upon informal bids authorized under Section 10122 shall be let only to a holder of a valid state contractor's license unless such work is exempt from such licensing requirement by any other provision of law.

Unit Basis

10124. Bids may be received and contracts awarded on a unit basis, that is, the bids compared upon the basis of estimates of the quantities of the work to be done.

Limitation on Contract Amount

10125. Except in unit basis contracts, contracts shall not be made exceeding in amount the estimates of costs approved by the director and plans and specifications and estimates of costs including expense of advertising and inspection, shall not be approved by the director requiring a greater expenditure of money than is appropriated for the specific purpose in the law authorizing the expenditure.

Cost Estimate

10126. Notwithstanding the provisions of Section 10125, the estimate of cost may be approved by the director, which includes alternates contemplating additions to, or deletions from, the base bid, provided:

(a) Estimates are made for each contingency and, in the aggregate, such alternates do not exceed 10 percent of the estimated cost for the project;

(b) The available funds are at least sufficient to cover the filed estimate for the base project;

(c) The low bid is determined through adding or deducting alternates in listed numerical sequence; and

(d) The contract is awarded to the lowest bidder providing the lowest total costs for the base bid and the alternatives accepted.

Bids for Public Works Projects

10127. The department may, with the approval of the State Public Works Board, receive bids for the construction of several public works projects as a single project. Where more than one appropriation has been made for the several projects united as a single project under the provisions of this section, payments for the single project shall be made from the separate appropriations on the proportional basis that may be determined by the department and approved by the Department of Finance. In the case of several projects united as a single project pursuant to this section, those projects shall be within 100 miles of one another.

Compliance with Labor Code

10128. All contracts awarded under this part shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to public works contracts and shall contain all the contract provisions required therein.

Article 3. Advertisements for Bids***Public Notice***

10140. Public notice of a project shall be given by publication once a week for at least two consecutive weeks, or once a week for more than two consecutive weeks if the longer period of advertising is deemed necessary by the department, as follows:

(a) In a newspaper of general circulation published in the county in which the project is located, or if located in more than one county, in such a newspaper in a county in which a major portion of the work is to be done.

(b) In a trade paper of general circulation published in San Francisco for projects located in County Group No. 1, as defined in Section 187 of the Streets and Highways Code, or in Los Angeles for projects located in County Group No. 2, as defined in said Section 187, devoted primarily to the dissemination of contract and building news among contracting and building materials supply firms.

The department may publish the notice to bidders for a project in additional trade papers or newspapers of general circulation that it deems advisable.

Contents of Notice

10141. The notice shall state the time and place for the receiving and opening of sealed bids, describing in general terms the work to be done and that the bids will be required for the entire project and for the performance of separate designated parts of the entire project, when the department determines that segregation is advisable.

Article 4. Bids and Bidders

Questionnaire

10160. The department may require from prospective bidders answers to questions contained in a standard form of questionnaire and financial statement including a complete statement of the prospective bidder's financial ability and experience in performing public works. When completed, the questionnaire and financial statements shall be verified under oath by the bidder in the manner in which pleadings in civil actions are verified. Whenever prequalification is required of any bidder on a contract, it shall be required for all prospective bidders to that contract.

Safety Questionnaire

10161. The department may also require from prospective bidders the completion, under penalty of perjury, of a standard form of questionnaire concerning the past safety record of each prospective bidder, any officer of such bidder, and any managing employee of such bidder. The department may refuse to prequalify any prospective bidder who fails to submit a completed questionnaire when required, or for the reason that the information contained in the submitted questionnaire or otherwise known to the department indicates a continuing unsatisfactory safety record.

The director of the department shall prescribe guidelines listing criteria which will be utilized administratively in determining an unsatisfactory safety record. A refusal by the department to prequalify a prospective bidder shall be issued only after the department has granted such bidder a hearing.

This section shall in no way abridge or restrict the right of the department to later determine whether the low bidder on a particular project is the lowest responsible bidder for purposes

of award of the contract, including the holding of hearings thereon.

The Director of Industrial Relations shall approve the standard form of questionnaire and the guidelines listing criteria which will be utilized administratively by the department in determining an unsatisfactory safety record prior to their use by the department.

Prior Disqualification

10162. The department shall require from all prospective bidders the completion, under penalty of perjury, of a standard form of questionnaire inquiring whether such prospective bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation, and if so to explain the circumstances.

A bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

Rating Bidders

10163. The department shall adopt and apply a uniform system of rating bidders, on the basis of the standard questionnaires and financial statements, in respect to the size of the contracts upon which each bidder is qualified to bid. When bids for more than one project are to be received at the same bid opening, the department may permit a bidder to submit bids for each project within such bidder's prequalification rating, even though such rating is insufficient to permit the

bidder to be awarded the contract for each project bid upon.

In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract work for which prequalification is required in excess of that authorized by his prequalification rating. In determining whether an award of a contract would result in a bidder having under contract work in excess of that authorized by his prequalification rating, the department may use its estimated cost of such contract rather than the amount of the bidder's bid. If the department determines that a bidder would be awarded the contract for two or more projects but cannot be awarded the contract for all such projects because of the inadequacy of his prequalification rating, the department shall determine which of the bids of such bidder are to be accepted and the contract awarded thereon and which of the bids of such bidder are to be disregarded. In making its decision the department shall be guided by the combination of contract awards which will result in the lowest total cost for the projects involved.

Projects Involving Federal Funds

10164. In all state projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The contract shall not be awarded unless the state agency has verified that the contractor has a valid license in the appropriate classification for the work performed. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License

Board. The department shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 10181 and shall result in the forfeiture of the security of the bidder.

Questionnaires Not Public Records

10165. The questionnaires and financial statements are not public records and are not open to public inspection.

Proposal Form

10166. The department shall furnish to each bidder a standard proposal form, which, when filled out and executed may be submitted as his bid. Bids not presented on forms so furnished shall be disregarded. The department shall not furnish proposal forms to any person who is required to submit and has not submitted a questionnaire and financial statement for prequalification at least five days prior to the date fixed for publicly opening sealed bids and been prequalified for at least one day prior to that date.

Bids and Bidder's Security Must Be Submitted Together Under Sealed Cover

10167. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer, made payable to the director of the department under which the work is to be performed. The security shall be in an amount equal to at least 10 percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it.

Late Bids

10168. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time.

Procedure for Withdrawal of Bids

10169. Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids only by written request for the withdrawal of the bid filed with the director of the department or the chief of the division under which the work is to be performed. The request shall be executed by the bidder or his duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid.

This section does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids.

Article 5. Award of Contracts***Opening Bids***

10180. On the day named in the public notice, the department shall publicly open the sealed bids and award the contracts to the lowest responsible bidders.

In the case of bids opened by a district director, pursuant to Section 10141, he shall report the contents thereof to the director. In all other respects, the contracts shall be awarded as are other contracts.

Procedure on Bidder's Failure to Execute Contract

10181. If the successful bidder fails to execute the contract, his bidder's security shall be forfeited to the state. The cash or proceeds shall be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost, and publication of notice are paid.

Award to Next Bidder

10182. If the director deems it is for the best interests of the state, he may, on the refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder.

If the second lowest responsible bidder fails or refuses to execute the contract, the director may likewise award it to the third lowest responsible bidder.

On the failure or refusal of the second or third lowest bidder, to whom a contract is so awarded, to execute it, his bidder's security shall be likewise forfeited to the state.

Failure to Furnish Bonds

10183. The failure of the successful bidder to furnish any bond required of him by law, within the time fixed for his execution of the contract, constitutes a failure to execute the contract.

Withholding of Bidder's Security

10184. The bidders' security of the second and third lowest responsible bidders may be withheld until the contract has been finally executed. The cash, cashier's checks and certified checks submitted by all other unsuccessful bidders shall be returned to them within 10 days after the contract is awarded, and their bidders' bonds shall be of no further effect.

Rejection of Bids

10185. If the director deems the acceptance of the lowest responsible bid or bids is not for the best interests of the state, after stating his or her reasons for rejecting the bid or bids, the director may reject all bids and proceed by day's labor or advertise for other bids in the manner required by this part.

Article 7. Contract Requirements

Approval of Contracts by Attorney; Filing Certified Copy

10220. Every contract awarded under this part shall be submitted to the Attorney General or the attorney appointed according to law and authorized to represent the department under which it is to be performed. Such a contract is not binding on the state until the appropriate attorney finds it to be in accordance with the requirements of this chapter, and endorses such finding thereon.

A certified copy of each contract shall be filed with the Controller, but the failure so to file does not invalidate it.

Bonds

10221. Every contract shall provide for the filing of separate performance and payment bonds by the contractor in the form of bonds executed by an admitted surety insurer and not deposits in lieu of bond, subject to the approval of the department.

Amount of Bond

10222. Each bond shall be in a sum equal to at least one-half of the contract price, except as otherwise provided in Section 3248 of the Civil Code or in the California Toll Bridge Authority Act.

Payment Bond

10223. The payment bond shall secure the payment of the claims of laborers, mechanics or materialmen employed on the work under the contract and shall contain all other provisions required by law.

Performance Bond

10224. The performance bond shall guarantee the faithful performance of the contract by the contractor.

Additional Surety; Payment Withheld

10225. No payment shall be made upon the contract to the contractor or

any assignee of the contractor until any order by the director that a sufficient surety be substituted on the bond or that a new, additional, or supplemental bond be given, is satisfied. No cancellation of or withdrawal of a surety from a bond is effective unless approved by the director.

Time of Completion of Work; Liquidated Damages; Bonus

10226. Every contract shall contain a provision in regard to the time when the whole or any specified portion of the work contemplated shall be completed, and shall provide that for each day completion is delayed beyond the specified time, the contractor shall forfeit and pay to the state a specified sum of money, to be deducted from any payments due or to become due to the contractor. The sum so specified is valid as liquidated damages unless manifestly unreasonable under the circumstances existing at the time the contract was made. A contract for a road project, flood control project, or project involving facilities of the State Water Resources Development System may also provide for the payment of extra compensation to the contractor, as a bonus for completion prior to the specified time, the provision, if used, to be included in the specifications and to clearly set forth the basis for the payment.

Changes of Plans and Specifications

10227. Every contract shall provide that the department may make changes in the plans and specifications pursuant to this part.

Air Pollution

10231. Every contract subject to this part shall contain a provision requiring each contractor to comply with all air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the contract, including any air pollution

control rules, regulations, ordinances, and statutes specified in Section 11017 of the Government Code.

Contempt of NLRB Court Order

10232. Every contract shall contain a statement by which the contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board. For purposes of this section, a finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because the contractor has complied with the order which was the basis for the finding. The state may rescind any contract in which the contractor falsely swears to the truth of the statement required by this section.

Contractor Certification of Percentage of Recycled Content in Product

10233. Contractors shall certify in writing, under penalty of perjury, to the department awarding a contract under this part, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

Article 7.1. Resolution of Contract Claims

Arbitration Procedures

10240. The remedy for the resolution of claims arising under contracts made under the provisions of this chapter shall be arbitration pursuant to this chapter.

Commencement of Arbitration

10240.1. The claimant may initiate arbitration not later than 90 days after the date of service in person or by mail on the claimant of the final written decision by the department on the claim. This limitation shall not apply to any claim founded on any cost audit, latent defect, warranty, or guarantee under the contract.

Administrative Review

10240.2. A failure by the claimant to pursue diligently and exhaust, as to the claim, the required administrative procedures set forth in the contract under which the claim arose shall be a bar to arbitration hereunder until there has been compliance therewith. Subject to the preceding sentence, if more than 240 days have elapsed since acceptance of the work by the department, the claimant is entitled to arbitration, even though the procedures are not concluded.

Selection of Arbitrator

10240.3. Unless otherwise agreed by the parties, the arbitration shall be conducted by a single arbitrator selected by the parties from the certified list created by the Public Works Contract Arbitration Committee. If the parties cannot agree on the arbitrator, either party may petition the superior court to appoint one from the panel of arbitrators certified by the Public Works Contract Arbitration Committee.

Finality of Decision

10240.4. No decision made by a department shall be conclusive on any issue in the arbitration.

Uniform Regulations

10240.5. The Departments of General Services, Transportation, and Water Resources shall jointly adopt and may, from time to time, modify, revise, or repeal uniform regulations to implement the provisions of this article, which regulations shall be consistent with this article and Article 7.2 (commencing with Section 10245). The regulations may include but not need not be limited to:

- (a) The method of initiating arbitration.
- (b) The place of hearing based upon the convenience of the parties.
- (c) Procedures for the selection of a neutral arbitrator.
- (d) The form and content of any pleading.
- (e) Procedure for conducting hearings.
- (f) The providing of experts to assist the arbitrator in the event the assistance is needed.
- (g) The content of the award.
- (h) Simplified procedures for claims of fifty thousand dollars (\$50,000) or less.

Pending adoption of the initial uniform regulations under this section, the arbitration rules set forth in Subchapter 3 (commencing with Section 301) of Chapter 2 of Title 1 of the California Administrative Code, shall govern the conduct of arbitrations under this chapter.

"Claim" Defined

10240.6. As used in this article, "claim" means a demand for monetary compensation or damages, arising under or relating to the performance of a contract awarded under this chapter.

"Committee" Defined

10240.7. As used in this article, "Public Works Contract Arbitration

Committee" means the committee created by Article 7.2 (commencing with Section 10245).

The Decision

10240.8. Unless the parties to the contract otherwise agree, the arbitration decision shall be decided under and in accordance with the law of this state, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law.

Other Parties

10240.9. A party to the contract may join in the arbitration as a party, any supplier, subcontractor, design professional, surety, or other person who has so agreed and if the joinder is necessary to prevent a substantial risk of the party otherwise being subjected to inconsistent obligations or decisions.

Waiver of Article

10240.10. Nothing in this article shall be construed as preventing the parties to the contract, after the claim has arisen, from mutually agreeing in writing to waive the provisions of this article and to have the claim litigated in a court of competent jurisdiction.

Arbitration Procedures

10240.11. Except as provided in this article and in the regulations adopted pursuant to Section 10240.5, the procedure governing the arbitrations shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. All provisions of Section 1283.05 of the Code of Civil Procedure, except subdivision (e) thereof, apply to the conduct of discovery for any arbitration hereunder.

Review of Award

10240.12. A party may, within the applicable time periods and upon the grounds specified in this section and in

Article 1 (commencing with Section 1285) of Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure, petition the court to confirm, correct, or vacate the award rendered by the arbitrator. However, no department may petition to vacate an award without the prior written authorization of its agency secretary. Except where the parties agree not to have the arbitration decision rendered in accordance with the provisions of Section 10240.8, a court shall vacate the award, or part thereof, if it determines either that the award, or part thereof, is not supported by substantial evidence or that it is not decided under or in accordance with the laws of this state. If the award, or part thereof, is vacated on the grounds set forth in the preceding sentence or in subdivision (d) or (e) of Section 1286.2 of the Code of Civil Procedure or if the court determines that the award does not include a determination of all submitted questions necessary to determine the controversy, the court may order a rehearing before the original arbitrator or remand to the original arbitrator that portion of the dispute which the court concludes the arbitrator failed to determine.

Recoverable Costs

10240.13. The cost of conducting the arbitration shall be borne equally by the parties. The filing fee, witness fees, costs of discovery, or any other cost necessarily incurred by one party shall not be shared by any other party, except that the arbitrator may allow the prevailing party to recover its costs and necessary disbursements, other than attorney's fees, on the same basis as is allowed in civil actions. These costs shall be taxed as in civil actions.

Interest may be recovered as part of the award as in a civil action. The arbitrator has the same authority as a court in awarding interest and the commencement of the arbitration is equivalent to the filing of an action

under subdivision (b) of Section 3287 of the Civil Code for the purpose of an award of interest.

If a party has made an offer of settlement and the award is less favorable than the offer, then the party who has received the offer shall not recover any interest accruing from and after the date on which the offer was made, nor costs of suit.

Reasonable attorney fees may be recovered according to any of the following:

(a) By a party who has made an offer under the circumstances set forth in the preceding sentence but only as to those fees incurred from and after the time of making the offer.

(b) Against a party when substantial evidence establishes that the party has acted frivolously or in bad faith in its demand for, or participation in, the arbitration.

Article 7.2. Public Works Contract Arbitration Committee

The Committee

10245. There is hereby established the Public Works Contract Arbitration Committee, which shall consist of seven members, as follows:

(a) Three public members, who shall be appointed by the Governor, each of whom shall have at least ten years' experience with a general contracting firm engaged, during that period, in public works construction in California.

(b) The directors of the Departments of General Services, Transportation, and Water Resources shall each appoint a member, who shall be a state officer or employee within their respective departments. Each member shall serve at the pleasure of the director who appointed the member.

(c) The Director of the Office of Administrative Hearings shall be a nonvoting member of the Public Works Contract Arbitration Committee.

Term

10245.1. Each member appointed by the Governor shall serve for a term of four years, but shall continue in office until the successor to the member is appointed. Each member shall serve without compensation, but shall be reimbursed for travel and other expenses necessarily incurred in the performance of the member's duties.

Procedures

10245.2. The committee may make recommendations to the departments respecting the arbitration practice and procedure provided by Article 7.1 (commencing with Section 10240). The departments shall consult and confer with the committee respecting the content of the uniform regulations governing the conduct of arbitrations under Article 7.1 (commencing with Section 10240) and shall consider the recommendations in adopting uniform regulations pursuant to Section 10240.5.

Certification of Arbitrators

10245.3. The committee may establish standards and qualifications for the certification of arbitrators and certify as arbitrators persons meeting such standards and qualifications. The committee may remove persons from its list of certified arbitrators.

Administrative Support

10245.4. The Office of Administrative Hearings shall provide administrative services, facilities, and fiscal support to implement this article and Article 7.1 (commencing with Section 10240). The cost thereof shall be recovered through filing fees imposed for each arbitration.

Article 8. Modifications; Performance;
Payment

Change in Unit Basis Contract

10250. The department may increase or decrease quantities of work to be

done under a unit basis contract during the progress of the work.

Provisions re Extra Work

10251. The department may cause the insertion of provisions in any contract for the performance of such extra work and the furnishing of materials therefor by the contractor as the department requires for the proper completion or construction of the whole work contemplated, if the bidders have equal opportunity of knowing the proposed terms for the extra work.

Extension of Time

10252. The director may grant such extensions of time for completion as he deems for the best interests of the state.

Failure of Contractor to Prosecute Work; Termination of Contractor's Control Over Work

10253. If the director deems that a contractor has failed to supply an adequate working force, or material of proper quality, or has failed to comply with Section 10262, or has failed in any other respect to prosecute the work with the diligence and force specified by the contract, the director may:

(a) After written notice of at least five days to the contractor, specifying the defaults to be remedied, provide any such labor or materials and deduct the cost from any money due or to become due to the contractor under the contract; or

(b) If he considers that the failure is sufficient ground for such action, he may give written notice of at least five days to the contractor and the contractor's sureties, that if the defaults are not remedied the contractor's control over the work will be terminated.

Termination of Contractor's Control

10254. If the defaults are not remedied within the time specified in

the notice, the contractor's control shall terminate as of the expiration of that time.

Procedure on Completion of Contract by State

10255. Upon such termination, the director may take possession of and use all or any part of the contractor's materials, tools, equipment, and appliances upon the premises to complete the contract. Thereupon, he may permit the surety to complete or cause the contract work to be completed, or he may direct that all or any part of the work be completed by day's labor or by employment of other contractors on informal contracts, or both.

Informal Contracts

10256. Such informal contracts may be awarded only after a proposal form has been prepared, a copy is served upon the contractor whose control has been terminated, and upon his surety, and three days allowed thereafter so that he may cause others to bid. Any person who is prequalified therefor under Article 4 may bid on informal contracts.

Applicability of Chapter

10257. The provisions of this part, except as to prequalification, are not applicable to the award of informal contracts.

Accounting on Completion by State

10258. If the control of a contractor is terminated or he abandons the work, and the work is performed by day's labor or informal contract as provided in Section 10255, he is not entitled to receive any portion of the amount to be paid under the contract until it is fully completed. After completion, if the unpaid balance exceeds the sum of the amount expended by the state in finishing the work, plus all damages sustained or to be sustained by the

state, the excess not otherwise required by law to be retained shall be paid to the contractor, but if such sum exceeds the unpaid balance, the contractor and his surety are liable to the state for the excess. If the surety completes the contract work, as provided in Section 10255, such surety shall be subrogated to money due under the contract and to money which shall become due in the course of completion by the surety, to the extent provided by law.

Return of Contractor's Tools, Etc.

10259. On the completion of the contract, the original contractor is entitled to the return of all his unused materials, and his equipment, tools, and appliances, except that he shall have no claim on account of usual and ordinary depreciation, loss, and wear and tear.

Service of Notice

10260. The notices required by this article may be served on the contractor or on his agent having charge of the work, personally, or by registered mail addressed to the contractor or his agent, or, if neither can be located or their addresses are unknown, by posting in a conspicuous place upon the premises of the project.

Payments

10261. Payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95

percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

Interest on Unpaid Progress and Final Payments

10261.5. (a) Any state agency which fails to make any progress payment within 30 days after receipt of the payment request from a contractor on a construction contract for an undisputed payment request, which was properly submitted by the contractor to the agency, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Any state agency which independently calculates the amount due on a progress payment and which fails to make a progress payment within 30 days of the first submittal of the estimate for each contract by the engineer, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the Controller has processed the payment within 14 days of receipt of the request or submittal, the contracting state agency shall pay interest to the

contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the contracting state agency has processed the payment within 16 days after receipt of the request or submittal, the Controller shall pay interest as provided in Section 685.010 of the Code of Civil Procedure.

For purposes of this section, a payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the Controller.

(b) Upon receipt of a payment request, each agency shall require:

(1) That each payment request be reviewed as soon as practicable after receipt for the purpose of determining that a payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned as soon as practicable, but not later than seven days, after receipt, specifying the reasons that the payment request is not a proper payment request.

(3) The number of days available to a state agency to make a timely payment of payment request without incurring interest shall be reduced by the number of days by which an agency exceeds the requirements of paragraph (2).

Subcontractor Payment

10262. The contractor shall pay to his or her subcontractors, within 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his or her subcontractors, to the extent of each subcontractor's interest therein. The

payments to subcontractors shall be based on estimates made pursuant to Section 10261. Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of the payments constitutes ground for actions proscribed in Section 10253, in addition to disciplinary action by the Contractors' State License Board. The subcontractor shall notify, in writing, the Contractors' State License Board and the department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261.

Publication of Notice of Progress Payments Made to Prime Contractors

10262.3. To facilitate enforcement of Section 10262, the Department of General Services shall publish in the California State Contracts Register notice of progress payments made to prime contractors.

Progress Payments to Subcontractors; Penalty; Report of Written Complaints of Violations

10262.5. (a) Notwithstanding any other provision of law, a prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due

per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars (\$300,000), relating to violations of this section.

Securities

10263. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or, a state or federally chartered bank in this state, as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent. The contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms

provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Alternatively, and subject to the approval and at the sole discretion of the public agency, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written request of an escrow agent who has not been approved by the public agency under this subdivision, the public agency shall provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that escrow agent. An escrow agent that has been disapproved by the public agency may not maintain any cause of action of any nature against the state or any public agency, officer, agent, or employee of any public agency, in connection with the disapproval of that escrow agent. The payments shall be deposited in a trust account with a federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with this subdivision, the remaining provisions of this section shall apply to escrow agents acting pursuant to this subdivision. In addition, an escrow agent subject to this subdivision shall maintain insurance to cover negligent acts and omissions of the escrow agent in connection with the handling of retentions under this section in an amount not less than one hundred

thousand dollars (\$100,000) per contract, executed by an admitted insurer and in a form satisfactory to the public agency.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include the provisions prescribed by this section in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

(e) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for

the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(f) The Legislature hereby finds and declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(g) An escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____

_____ whose address is _____
 _____ hereinafter called "owner,"
 _____ whose address is _____
 _____ hereinafter called
 "contractor," and _____
 _____ whose address is _____
 _____ hereinafter called "escrow agent."

For the consideration hereinafter set forth, the owner, contractor, and escrow agent agree as follows:

(1) Pursuant to Section 10263 of the Public Contract Code of the State of California, the contractor has the option to deposit securities with the escrow agent as a substitute for retention earnings required to be withheld by the owner pursuant to the construction contract entered into between the owner and contractor for _____ in the amount of _____ dated _____ (hereafter referred to as the "contract").

Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When the contractor deposits the securities as a substitute for the contract earnings, the escrow agent shall notify the owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the contract between the owner and contractor. Securities shall be held in the name of the _____, and shall designate the contractor as the beneficial owner.

(2) The owner shall make progress payments to the contractor for those funds which otherwise would be withheld from progress payments pursuant to the contract provision, provided that the escrow agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of contractor and shall be

subject to withdrawal by contractor at any time and from time to time without notice to the owner.

(6) The contractor shall have the right to withdraw all or any part of the principal in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(7) The owner shall have a right to draw upon the securities in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the owner.

(8) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the contractor all securities and interest on deposit less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (8), inclusive, of this agreement and the owner and contractor shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of
the owner:

Title

Name

Signature

Address

On behalf of
the contractor:

Title

Name

Signature

Address

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Title

Name

Signature

Contractor

Title

Name

Signature

Mobilization Payments

10264. In addition to the provisions for partial payment made in Section 10261, the department may make partial payments for the mobilization costs of a contract subject to this chapter, not to exceed the following:

(a) When 5 percent of the original contract amount is earned, 50 percent of the amount bid for mobilization, or 5

percent of the original contract amount, whichever is lesser, may be paid.

(b) When 10 percent of the original contract amount is earned, 75 percent of the amount bid for mobilization or 7.5 percent of the original contract amount, whichever is lesser, may be paid.

(c) When 20 percent of the original contract amount is earned, 95 percent of the amount bid for mobilization, or 9.5 percent of the original contract amount, whichever is lesser, may be paid.

(d) When 50 percent of the original contract amount is earned, 100 percent of the amount bid for mobilization, or 10 percent of the original contract amount, whichever is lesser, may be paid.

(e) Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10 percent of the original contract amount will be paid.

No Claim Necessary

10265. A claim pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code is not required, but legal action on any claim shall be commenced within six months after final decision of the department or determination of rights by the hearing officer. The department may compromise or otherwise settle any claims arising from the contract at any time.

Article 9. Offenses

Certain Acts Made Felonies

10280. Any officer or employee of the department who corruptly performs any official act to the injury of the state, is guilty of a felony.

Violation of Contract

10281. Any contractor or his agent or employee who corruptly permits the

violation of any contract awarded under this part to the injury of the state, is guilty of a felony.

Failure to Notify Department

10282. Any subcontractor or agent or employee of any contractor or subcontractor, who has knowledge of any work being done in violation of any contract under this part and does not immediately notify the department or the inspector or resident engineer upon the project of the violation, is guilty of a felony.

Criminal Penalty

10283. Such felonies are punishable by imprisonment in the state prison.

Liability

10284. Such persons are also liable to the state for double the amount the state may have lost, or be liable to lose by reason of the acts made crimes by this article.

"Person"

10285. The term "person," as used in this article, means any individual, partnership, joint venture, or association or any other organization or any combination thereof.

Suspension of Person Convicted of Certain Crimes

10285.1. Any state agency may suspend, for a period of up to three years from the date of conviction, any person from bidding upon, or being awarded, a public works or services contract with the agency under this part or from being a subcontractor at any tier upon the contract, if that person, or any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection

with the bidding upon, award of, or performance of, any public works contract, as defined in Section 1101, with any public entity, as defined in Section 1100, including, for the purposes of this article, the Regents of the University of California or the Trustees of the California State University. A state agency may determine the eligibility of any person to enter into a contract under this article by requiring the person to submit a statement under penalty of perjury declaring that neither the person nor any subcontractor to be engaged by the person has been convicted of any of the offenses referred to in this section within the preceding three years.

Notice and Hearing

10285.2. Before suspending any person under this article, the state agency shall provide a hearing upon reasonable notice. In determining whether to suspend, and the duration of any suspension, the state agency shall consider, in addition to any other relevant factors, both of the following:

- (a) The degree to which the person cooperated with the state or federal authorities in the criminal proceeding.
- (b) The degree to which the person has agreed to restitution for any damages incurred by the public entity as a result of the acts upon which the conviction was based.

Adoption of Suspension by other Agencies

10285.3. In the event that any state agency has suspended any person under this article, any other state agency shall adopt the terms of that suspension without further notice or hearing.

Termination of Suspension

10285.4. In the event that any state agency has suspended any person under this article, that agency may

terminate the suspension if it determines that termination is in the best interest of the agency. In the event of termination, any suspension by adoption pursuant to Section 10285.3 also shall be terminated.

Effect of Suspension by Federal Agency

10285.5. Nothing in this article shall require any state agency to contract with, or to permit the employment of a person as a subcontractor, or any person on any project funded in whole or part by federal funds, if the person has been suspended or debarred by the federal agency providing the funds.

Note: Contractor must be licensed before he submits a bid under the State Contract Act. See Contractors License Law codified by Chapter 37, Statutes 1939, as Chapter 9 of Division 3 of the Business and Professions Code (§ 7000 et seq.), as amended. In addition, see Public Contract Code section 10164 as to special provisions relating to projects in which federal funds are involved.

FURNISHING OF LABOR AND MATERIALS

Civil Code Sections

CHAPTER 1. GENERAL DEFINITIONS

Construction

3082. Unless the context otherwise requires, the provisions in this chapter govern the construction of this title.

* * * * *

"Claimant"

3085. "Claimant" means any person entitled under this title to record a claim of lien, to give a stop notice in connection with any work of improvement, or to recover on any payment bond, or any combination of the foregoing.

"Completion"

3086. "Completion" means, in the case of any work of improvement other than a public work, actual completion of the work of improvement. Any of the following shall be deemed equivalent to a completion:

(a) The occupation or use of a work of improvement by the owner, or his agent, accompanied by cessation of labor thereon.

(b) The acceptance by the owner, or his agent, of the work of improvement.

(c) After the commencement of a work of improvement, a cessation of labor thereon for a continuous period of 60 days, or a cessation of labor thereon for a continuous period of 30 days or more if the owner files for record a notice of cessation.

If the work of improvement is subject to acceptance by any public entity, the completion of such work of improvement shall be deemed to be the date of such acceptance; provided, however, that, except as to contracts awarded under the State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division 3, Title 2 of the

Government Code, a cessation of labor on any public work for a continuous period of 30 days shall be a completion thereof.

* * * * *

"Contract"

3088. "Contract" means an agreement between an owner and any original contractor providing for the work of improvement or any part thereof.

"Laborer"

3089. (a) "Laborer" means any person who, acting as an employee, performs labor upon or bestows skill or other necessary services on any work of improvement.

(b) "Laborer" also includes any person or entity, including an express trust fund described in Section 3111, to whom a portion of the compensation of a laborer as defined in subdivision (a) is paid by agreement with that laborer or the collective bargaining agent of that laborer. To the extent that a person or entity defined in this subdivision has standing under applicable law to maintain a direct legal action, in their own name or as an assignee, to collect any portion of compensation owed for a laborer, that person or entity shall have standing to enforce any rights under this title to the same extent as the laborer. This section is intended to give effect to the long-standing public policy of this state to protect the entire compensation of laborers on works of improvement, regardless of the form in which that compensation is to be paid.

"Materialman"

3090. "Materialman" means any person who furnishes materials or supplies to be used or consumed in any work of improvement.

"Notice of Cessation"

3092. "Notice of cessation" means a written notice, signed and verified by the owner or his agent, containing all of the following:

- (a) The date on or about when the cessation of labor commenced.
- (b) A statement that such cessation has continued until the recording of the notice of cessation.
- (c) The name and address of the owner.
- (d) The nature of the interest or estate of the owner.
- (e) A description of the site sufficient for identification, containing the street address of the site, if any. If a sufficient legal description of the site is given, the validity of the notice shall not, however, be affected by the fact that the street address is erroneous or is omitted.
- (f) The name of the original contractor, if any, for the work of improvement as a whole.

(g) For the purpose of this section, "owner" means the owner who causes a building, improvement, or structure, to be constructed, altered, or repaired (or his successor in interest at the date of a notice of cessation from labor is filed for record) whether the interest or estate of such owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where such interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the "owner" within the meaning of this section. Any notice of cessation signed by less than all of such cotenants shall recite the names and addresses of all such cotenants.

The notice of cessation shall be recorded in the office of the county recorder of the county in which the site is located and shall be effective only if there has been a continuous cessation of labor for at least 30 days prior to such recording.

"Notice of Completion"

3093. "Notice of completion" means a written notice, signed and verified by the owner or his agent, containing all of the following:

- (a) The date of completion (other than a cessation of labor). The recital of an erroneous date of completion shall not, however, affect the validity of the notice if the true date of completion is within 10 days preceding the date of recording of such notice.
- (b) The name and address of the owner.
- (c) The nature of the interest or estate of the owner.
- (d) A description of the site sufficient for identification, containing the street address of the site, if any. If a sufficient legal description of the site is given, the validity of the notice shall not, however, be affected by the fact that the street address recited is erroneous or that such street address is omitted.

(e) The name of the original contractor, if any, or if the notice is given only of completion of a contract for a particular portion of such work of improvement, as provided in Section 3117, then the name of the original contractor under such contract, and a general statement of the kind of work done or materials furnished pursuant to such contract.

The notice of completion shall be recorded in the office of the county recorder of the county in which the site is located, within 10 days after such completion. A notice of completion in otherwise proper form, verified and containing the information required by this section shall be accepted by the

recorder for recording and shall be deemed duly recorded without acknowledgment.

If there is more than one owner, any notice of completion signed by less than all of such co-owners shall recite the names and addresses of all of such co-owners; and provided further, that any notice of completion signed by a successor in interest shall recite the names and addresses of his transferor or transferors.

For the purpose of this section, owner is defined as set forth in subdivision (g) of Section 3092.

"Notice of Nonresponsibility"

3094. "Notice of nonresponsibility" means a written notice, signed and verified by a person owning or claiming an interest in the site who has not caused the work of improvement to be performed, or his agent, containing all of the following:

- (a) A description of the site sufficient for identification.
- (b) The name and nature of the title or interest of the person giving the notice.
- (c) The name of the purchaser under contract, if any, or lessee, if known.
- (d) A statement that the person giving the notice will not be responsible for any claims arising from the work of improvement.

Within 10 days after the person claiming the benefits of nonresponsibility has obtained knowledge of the work of improvement, the notice provided for in this section shall be posted in some conspicuous place on the site. Within the same 10-day period provided for the posting of the notice, the notice shall be recorded in the office of the county recorder of the county in which the site or some part thereof is located.

"Original Contractor"

3095. "Original contractor" means any contractor who has a direct

contractual relationship with the owner.

"Payment Bond"

3096. "Payment bond" means a bond with good and sufficient sureties that is conditioned for the payment in full of the claims of all claimants and that also by its terms is made to inure to the benefit of all claimants so as to give these persons a right of action to recover upon this bond in any suit brought to foreclose the liens provided for in this title or in a separate suit brought on the bond. An owner, original contractor, or a subcontractor may be the principal upon any payment bond.

* * * * *

"Preliminary 20-Day Notice (Public Work), Stop Notice"

3098. "Preliminary 20-day notice (public work)" means a written notice from a claimant that was given prior to the assertion of a claim against a payment bond, or the filing of a stop notice on public work, and is required to be given under the following circumstances:

- (a) In any case in which the law of this state affords a right to a person furnishing labor or materials for a public work who has not been paid therefor to assert a claim against a payment bond, or to file a stop notice with the public agency concerned, and thereby cause the withholding of payment from the contractor for the public work, any person that has no direct contractual relationship with the contractor, other than a person who performed actual labor for wages or an express trust fund described in Section 3111, may file the preliminary notice, but no payment shall be withheld from the contractor pursuant to that notice unless the person has caused written notice to be given to the contractor, and the public agency concerned, not later

than 20 days after the claimant has first furnished labor, services, equipment, or materials to the jobsite, stating with substantial accuracy a general description of labor, service, equipment, or materials furnished or to be furnished, and the name of the party to whom the same was furnished. This notice shall be served by mailing the same by first-class mail, registered mail, or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or his or her residence, or by personal service. In case of any public works constructed by the Department of Public Works or the Department of General Services of the state, such notice shall be served by mailing in the same manner as above, addressed to the office of the disbursing officer of the department constructing the work, or by personal service upon the officer. When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

(b) Where the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed under Chapter 9, (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

(c) The notice requirements of this section shall not apply to a laborer described in Section 3089 or to an express trust fund described in Section 3111.

(d) If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice pursuant to subdivision (a), that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The

claimant shall, however, be entitled to assert a claim against a payment bond and file a stop notice only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(e) The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.

"Public Entity"

3099. "Public entity" means the state, Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

"Public Work"

3100. "Public work" means any work of improvement contracted for by a public entity.

"Site"

3101. "Site" means the real property upon which the work of improvement is being constructed or performed.

"Site Improvement"

3102. "Site improvement" means the demolishing or removing of improvements, trees, or other vegetation located thereon, or drilling test holes or the grading, filling, or otherwise improving of any lot or tract of land or the street, highway, or sidewalk in front of or adjoining any lot or tract of land, or constructing or installing sewers or other public utilities therein, or constructing any areas, vaults, cellars, or rooms under said sidewalks or making any improvements thereon.

"Stop Notice"

3103. "Stop notice" means a written notice, signed and verified by the claimant or his or her agent, stating in general terms all of the following:

- (a) The kind of labor, services, equipment, or materials furnished or agreed to be furnished by such claimant.
- (b) The name of the person to or for whom the same was done or furnished.
- (c) The amount in value, as near as may be, of that already done or furnished and of the whole agreed to be done or furnished.
- (d) The name and address of the claimant.

The notice, in the case of any work of improvement other than a public work, shall be delivered to the owner personally or left at his or her residence or place of business with some person in charge, or delivered to his or her architect, if any, if the notice is served upon a construction lender, holding construction funds and maintaining branch offices, it shall not be effective as against the construction lender unless given to or served upon the manager or other responsible officer or person at the office or branch thereof administering or holding the construction funds. The notice, in the case of any public work for the state, shall be filed with the director of the department which let the contract and, in the case of any other public work, shall be filed in the office of the controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract, or with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom the contract was awarded. No stop notice shall be invalid by reason of any defect in form if it is sufficient to substantially inform the owner of the information required.

Any stop notice may be served by registered or certified mail with the same effect as by personal service.

"Subcontractor"

3104. "Subcontractor" means any contractor who has no direct contractual relationship with the owner.

"Subdivision"

3105. "Subdivision" means a work of improvement consisting of two or more separate residential units or two or more buildings, mining claims, or other improvements owned or reputed to be owned by the same person or on which the claimant has been employed by the same person. A separate residential unit means one residential structure, together with any garage or other improvements appurtenant thereto.

"Work of Improvement"

3106. "Work of improvement" includes but is not restricted to the construction, alteration, addition to, or repair, in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road, the seeding, sodding, or planting of any lot or tract of land for landscaping purposes, the filling, leveling, or grading of any lot or tract of land, the demolition of buildings, and the removal of buildings. Except as otherwise provided in this title, "work of improvement" means the entire structure or scheme of improvement as a whole.

CHAPTER 2. MECHANICS' LIENS**Article 1. Application of Chapter*****Application***

3109. This chapter does not apply to any public work.

Article 2. Who Is Entitled to Lien

Persons Entitled to Lien

3110. Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams, or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor, architect, builder, or other person having charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

Union Trust Fund Liens

3111. For the purposes of this chapter, an express trust fund to which a portion of a laborer's total compensation is to be paid pursuant to an applicable employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder, shall be entitled to assert the same rights and claims as laborers performing labor upon, or bestowing skill or other necessary services on, a work of improvement, to the extent of

the compensation agreed to be paid to that express trust fund for labor on that improvement only.

* * * * *

CHAPTER 4. STOP NOTICE FOR PUBLIC WORK

Article 1. Application of Chapter

Application

3179. The provisions of this chapter apply only to a public work.

Article 2. Who Is Entitled to Serve a Stop Notice

Persons Entitled to Serve Stop Notice

3181. Except for an original contractor, any person mentioned in Section 3110, 3111, or 3112, or in Section 4107.7 of the Public Contract Code, or furnishing provisions, provender, or other supplies, may serve a stop notice upon the public entity responsible for the public work in accordance with this chapter.

Article 3. Conditions to Service of Stop Notice

Conditions to Enforcing Stop Notice

3183. A claimant shall be entitled to enforce a stop notice only if he has complied with each of the following conditions:

(a) He shall have given the preliminary 20-day notice (public work) in accordance with Section 3098 if required by that section.

(b) He shall have filed his stop notice as defined in Section 3103 and in accordance with Section 3184.

Service; Time

3184. To be effective, any stop notice pursuant to this chapter must be served before the expiration of:

(a) Thirty days after the recording of a notice of completion (sometimes

referred to in public works as a notice of acceptance) or notice of cessation, if such notice is recorded.

(b) If no notice of completion or notice of cessation is recorded, 90 days after completion or cessation.

Notice by Public Entity

3185. No later than 10 days after the filing of a notice of completion or after the cessation of labor has been deemed a completion of the public work or after the acceptance of completion, whichever is later, the public entity shall give notice of the expiration of such period to each stop notice claimant by personal service, or registered or certified mail. When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail in a United States post office, addressed to the claimant at the address shown upon his stop notice claim. No such notice need be given unless the claimant shall have paid to the public entity the sum of two dollars (\$2) at the time of filing his stop notice.

Withholding of Money or Bonds

3186. It shall be the duty of the public entity, upon receipt of a stop notice pursuant to this chapter, to withhold from the original contractor, or from any person acting under his or her authority, money or bonds (where bonds are to be issued in payment for the work of improvement) due or to become due to that contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder. The public entity may satisfy this duty by refusing to release money held in escrow pursuant to Section 10263 or 22300 of the Public Contract Code.

Payment to Original Contractor

3187. This chapter does not prohibit (a) the payment of any money or bonds

to the original contractor or his assignee unless a stop notice is on file before the disbursing officer has actually surrendered possession of either the warrant, check, bonds, or money, or (b) the payment to the original contractor or his assignee of any money due him in excess of an amount sufficient to answer the total amount of the claims stated in stop notices on file at the time of such payment plus such interest and court costs as might be reasonably anticipated in connection with the claims.

Article 4. Priorities

Pro Rata Distribution

3190. If the money withheld pursuant to stop notices shall be insufficient to pay in full all of the valid claims stated in such notices, the same shall be distributed among the stop notice claimants in the same ratio that their respective claims bear to the aggregate of such valid claims, without regard to the order of time in which their respective notices may have been served or their respective actions, if any, commenced.

Recovery of Deficit

3191. Nothing in this article shall impair the right of any stop notice claimant to recover from the contractor or his sureties any deficit that may remain unpaid after such pro rata distribution in an action upon the bond provided for by Chapter 7 (commencing with Section 3247).

Forfeiture for Willful Misstatement

3192. Any person who willfully gives a false stop notice to the public entity or who willfully includes in his notice labor, services, equipment, or materials not furnished for the work of improvement with respect to which such notice is given, forfeits all right to

participate in the pro rata distribution of money or bonds withheld.

Priorities: Assignment; Garnishment

3193. No assignment by the original contractor of any of the money due or to become due to the original contractor under the contract, or for "extras" in connection therewith whether made before or after the service of a stop notice, takes priority over a stop notice under this chapter and such assignment has no effect on the rights of the stop notice claimants. Any garnishment of such money by any creditor of the original contractor pursuant to Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure and any statutory lien thereon are subordinate to the rights of all stop notice claimants.

Article 5. Release of Stop Notice

Release Bond

3196. If the original contractor or subcontractor disputes the correctness or validity or enforceability of any stop notice, the public entity may, in its discretion, permit the original contractor to file with the public entity a bond executed by a corporate surety, in an amount equal to 125 percent of the claim stated in the stop notice conditioned for the payment of any sum which the stop notice claimant may recover on the claim together with his costs of suit in the action, if he recovers therein. Upon the filing of such bond with the public entity, the public entity shall not withhold any money or bonds (where bonds are to be issued in payment for the work of improvement) from the original contractor on account of the stop notice. The surety or sureties upon such bond shall be jointly and severally liable to the stop notice claimant with the surety or sureties upon any payment bond

furnished pursuant to Chapter 7 (commencing with Section 3247).

Summary Proceedings

3197. If the original contractor asserts (1) that the claim upon which the stop notice is based is not included within the types or classifications of claims referred to in this article, or (2) that the claimant is not one of the persons named in Section 3181, or (3) that the amount of the claim as specified in the stop notice is excessive, or (4) that there is no basis in law for the claim as referred to and set out in the stop notice, he may have the question determined in a summary proceedings in accordance with the provisions of Sections 3198 to 3205, inclusive.

Affidavit by Original Contractor

3198. The original contractor shall serve upon the public entity an affidavit and a copy thereof alleging the legal grounds upon which he bases his claim and the facts in support thereof, and demanding the release of all or such portion of such money or bonds as is alleged to be withheld improperly or in an excessive amount. Such affidavit shall also state the address of the original contractor within this state for the purpose of permitting service by mail upon him of any notice or legal document.

Service of Affidavit upon Claimant

3199. The public entity shall serve upon the claimant, either personally or by registered or certified mail, addressed to the last known address of the claimant, a copy of the affidavit and the demand for release together with a written notice stating that the public entity will release such money or bonds, or such portion of either as has been demanded, unless the claimant files with the public entity a counteraffidavit on or before a time designated in the notice, which shall

not be less than 10, nor more than 20 days, after service upon the claimant of the copy of such affidavit. Proof of service shall be made by an affidavit.

Counteraffidavit by Claimant

3200. If the claimant desires to contest the original contractor's affidavit and demand for release, he shall, within the time allowed, serve upon the public entity a counteraffidavit alleging the details of his claim and shall also set forth in detail the specific basis upon which he contests or rebuts the allegations of the original contractor's affidavit, together with proof of service of a copy of such counteraffidavit upon the original contractor. If no such counteraffidavit with proof of service is served upon the public entity within the time allowed, then the public entity shall forthwith release the money or bonds, or such portion thereof as has been demanded by such affidavit, without further notice to the claimant, and the public entity shall not be liable in any manner for making such release. The public entity shall not be responsible for the validity of the affidavit or counteraffidavit.

Action for Declaration of Rights

3201. If such counteraffidavit, together with proof of service, is so filed, either the original contractor or the claimant may file an action in the appropriate superior court for a declaration of the respective rights of the parties. After the filing of such action, either the original contractor or the claimant shall be entitled to a hearing by the court for the purpose of determining his rights under the affidavit and demand for release and the counteraffidavit. Such hearing must be granted by the court within 15 days from the date of making of such motion, unless continued by the court for good cause. The party making the motion for hearing must give not less than five days' notice in writing of such

hearing to the public entity and to the other party.

Hearing Procedures

3202. At such hearing, the original contractor shall have the burden of proof. The affidavit and counteraffidavit shall be filed with the court by the public entity and they shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the original contractor shall be deemed controverted by the counteraffidavit, and both shall be received in evidence.

Court's Determination

3203. No findings shall be required in a summary proceeding under this article. When the hearing is before the court sitting without a jury and no evidence other than the affidavit and counteraffidavit is offered, if the court is satisfied that sufficient facts are shown thereby, it may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall make and enter its order determining whether the demand for release shall be allowed or not, which order shall be determinative as to the right of the claimant to have the money or bonds further withheld by the public entity. The original contractor shall serve a copy of such order on the public entity.

Jury Trial Waived

3204. Nothing contained in this article shall be construed to deprive any party of the right to a trial by jury in any case where such right is given by the California Constitution, but a jury trial may be waived in like manner as in the trial of an action.

Effect of Court's Determination

3205. No determination in the summary proceedings under this article shall be res judicata with respect to any right of action by the claimant against either principal or surety on any labor and material bond or with respect to any right of action against any party personally liable to the claimant.

Article 6. Enforcement of Rights
Arising From Stop Notice

Commencement of Action

3210. An action against the original contractor and the public entity to enforce payment of the claim stated in the stop notice may be commenced at any time after 10 days from the date of the service of the stop notice upon the public entity and shall be commenced not later than 90 days following the expiration of the period within which stop notices must be filed as provided in Section 3184. No such action shall be brought to trial or judgment entered until the expiration of said 90-day period. No money or bond shall be withheld by reason of any such notice longer than the expiration of such 90-day period unless proceedings be commenced in a proper court within that time by the claimant to enforce his claim, and if such proceedings have not been commenced such notice shall cease to be effective and the moneys or bonds withheld shall be paid or delivered to the contractor or other person to whom they are due.

Notice of Commencement of Action

3211. Notice of the commencement of any such action shall be given to the public entity within five days after commencement of the action described in Section 3210 in the same manner as provided in Section 3103.

Discretionary Dismissal

3212. In case such action is commenced as provided in Section

3210 but is not brought to trial within two years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution.

Effect of Dismissal or Judgment

3213. In all cases upon the dismissal of an action commenced as provided in Section 3210, unless expressly stated to be without prejudice, or upon a judgment rendered therein against the claimant, the stop notice shall cease to be effective and the moneys or bonds withheld shall be paid or delivered to the person to whom they are due.

Consolidation of Action

3214. Any number of persons who have given stop notices may join the same action and when separate actions are commenced the court first acquiring jurisdiction may consolidate them. Upon the request of the public entity the court shall require all claimants to the moneys withheld pursuant to stop notices to be impleaded in one action, to the end that the respective rights of all parties may be adjudicated therein.

CHAPTER 5. GENERAL PROVISIONS
RELATING TO BONDS

Article 1. Construction of and Terms
and Conditions of Bonds

Scope of Surety's Obligations

3225. The surety or sureties on any bond given pursuant to any of the provisions of this title shall not be exonerated or released from the obligation of the bond by any change, alteration, or modification in or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or

extension of the time for any payment pertaining or relating to any scheme or work of improvement, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor, where the bond is given for the benefit of claimants, by any fraud practiced by any person other than the claimant seeking to recover on the bond.

Construction Against Surety

3226. Any bond given pursuant to the provisions of this title will be construed most strongly against the surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall a surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110, 3111, or 3112, and has not been paid the full amount of his claim.

CHAPTER 6. PAYMENT BOND FOR PRIVATE WORKS

* * * * *

CHAPTER 7. PAYMENT BOND FOR PUBLIC WORKS

When Required

3247. (a) Every original contractor to whom is awarded a contract by a public entity, except as provided in subdivision (d) of Section 7103 of the Public Contract Code, involving an expenditure in excess of twenty-five thousand dollars (\$25,000) for any

public work shall, before entering upon the performance of the work, file a payment bond with and approved by the officer or public entity by whom the contract was awarded.

A public entity shall state in its call for bids for any such contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract which supplements the contract for which such payment bond was filed, if the requirement of a new bond is waived by the public entity.

(c) For purposes of this section, providers of architectural, engineering, and land surveying services pursuant to a contract with a public entity for any public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b). This subdivision shall apply to all contracts entered into subsequent to January 1, 1971.

The amendment to this section made during the 1980 portion of the 1979-80 Regular Session of the Legislature by Chapter 293 of the Statutes of 1980, does not constitute a change in, but is declaratory of, existing law.

Amount and Condition

3248. In order to be approved, the payment bond shall satisfy all of the following requirements:

(a) The bond shall be in a sum not less than that prescribed in the following paragraph which is applicable to the total amount payable:

(1) One hundred percent of the total amount payable by the terms of the contract when the total amount payable does not equal or exceed five million dollars (\$5,000,000).

(2) Fifty percent of the total amount payable by the terms of the contract

when the total amount payable is not less than five million dollars (\$5,000,000) and does not exceed ten million dollars (\$10,000,000).

(3) Twenty-five percent of the total amount payable by the terms of the contract if the contract exceeds ten million dollars (\$10,000,000).

(b) The bond shall provide that if the original contractor or a subcontractor fails to pay (1) any of the persons named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the sureties will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The original contractor may require of the subcontractors a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by the subcontractors under this section.

(c) The bond shall, by its terms, inure to the benefit of any of the persons named in Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

(d) The bond shall be in the form of a bond and not a deposit in lieu of a bond.

Time for Commencing Action

3249. Suit against the surety or sureties on the payment bond may be brought by any claimant, or his assigns, at any time after the claimant has furnished the last of the labor or materials, or both, but must be commenced before the expiration of six

months after the period in which stop notices may be filed as provided in Section 3184.

Action May Be Maintained Separately; Attorney's Fees

3250. The filing of a stop notice is not a condition precedent to the maintenance of an action against the surety or sureties on the payment bond. An action on the payment bond may be maintained separately from and without the filing of an action against the public entity by whom the contract was awarded or any officer thereof. In any action, the court shall award to the prevailing party a reasonable attorney's fee, to be taxed as costs.

Payment to Original Contractor

3251. Unless a payment bond is filed and approved as provided in this chapter, no claim in favor of the original contractor arising under the contract shall be audited, allowed or paid by the public entity awarding the contract or any officer thereof. Claimants shall receive payment of their respective claims in the manner provided by Chapter 4 (commencing with Section 3179) upon complying with the provisions thereof.

This section shall become operative on the 181st day after it becomes effective.

90-Day Preliminary Notice

3252. (a) With regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, a claimant shall give the 20-day public works preliminary bond notice as provided in Section 3098.

(b) If the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227

within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

CHAPTER 8. MISCELLANEOUS PROVISIONS

County Recorder's Instructions

3258. The county recorder shall number, index, and preserve all contracts, plans, and other papers presented to him for filing pursuant to this title, and shall number, index, and transcribe into the official records in his office in the same manner as a conveyance of land, all notices, claims of lien, payment bonds, and other papers recorded pursuant to this title. He shall receive therefor the fees prescribed in Article 5 (commencing with Section 27360), Chapter 6, Part 3, Division 2, Title 3 of the Government Code.

Applicable Procedures

3259. Except as otherwise provided in this title, the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure are applicable to, and constitute the rules of practice in, the proceedings mentioned in this title. The provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this title or with rules adopted by the Judicial Council, apply to the proceedings mentioned in this title.

* * * * *

Mistakes, Errors, Innocent Third Parties

3261. No mistake or errors in the statement of the demand, or of the

amount of credits and offsets allowed, or of the balance asserted to be due the claimant, or in the description of the property against which the lien is recorded, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due, was made with the intent to defraud, or that an innocent third party, without notice, direct or constructive, has since the claim was recorded become the bona fide owner of the property, and that the notice of claim was so deficient that it did not put the party on further inquiry in any manner.

Waiver of Claims or Liens

3262. (a) Neither the owner nor original contractor by any term of their contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check which has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

(b) No oral or written statement purporting to waive, release, impair or

otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless (1) it is pursuant to a waiver and release prescribed herein, or (2) the claimant had actually received payment in full for the claim.

(c) This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien, stop notice, or bond claims.

(d) The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances:

(1) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from _____ in
(Maker of Check)
the sum of \$ _____
(Amount of Check)
payable to _____
(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop

notice, or bond right the undersigned has on the job of

_____ located at
(Owner)

_____ to the following
(Job Description)

extent. This release covers a progress payment for labor, services, equipment, or material furnished to _____

(Your Customer)
through _____ only and does
(Date)

not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received ; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: _____
(Company Name)
By _____
(Title)

(2) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it

has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

**UNCONDITIONAL WAIVER AND
RELEASE
UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$____ for labor, services, equipment, or material furnished to _____ on the _____
(Your Customer)
job of _____ located at _____
(Owner)

_____ and does hereby
(Job Description)
release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to _____ through _____
(Your Customer) (Date)

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received ; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material

was not compensated by the progress payment.

Dated: _____
By _____
(Company Name)
(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

(3) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

**CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT**

Upon receipt by the undersigned of a check from _____ in the sum of \$____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____ located at _____
(Owner)
_____. This release
(Job Description)

covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: _____

 (Company Name)
 By _____

 (Title)

(4) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to _____

 (Your Customer)
 on the job of _____

 (Owner)
 located at _____

 (Job Description)
 and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$____.

Dated: _____

 (Company Name)
 By _____

 (Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as

the largest type otherwise on the document:

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

Public Utilities; Contracts; Subcontractor Progress Payment; Violations

3262.5. (a) Any person or corporation which has contracted to do business with a public utility, hereafter referred to in this section as a contractor, shall pay any subcontractors within 15 working days of receipt of each progress payment from the public utility, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each of the subcontractors' interest in that work. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from a contractor to a subcontractor, then the contractor may withhold no more than 150 percent of the disputed amount.

(b) Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the disputed amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(c) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor, or deficient

performance or nonperformance by a subcontractor.

Effect of Owner's Action

3263. No act done by an owner in good faith and in compliance with any of the provisions of this title shall be held to be a prevention of the performance of any contract between the owner and an original contractor by an original contractor, or to exonerate the sureties on any bond given for faithful performance or for the payment of claimants.

Equitable Liens

3264. The rights of all persons furnishing labor, services, equipment, or materials for any work of improvement, with respect to any fund for payment of construction costs, are governed exclusively by Chapters 3 (commencing with Section 3156) and 4 (commencing with Section 3179) of this title, and no person may assert any legal or equitable right with respect to such fund, other than a right created by direct written contract between such person and the person holding the fund, except pursuant to the provisions of such chapters.

Public Claim Filing Procedures Inapplicable

3265. The claim filing procedures set forth in Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code do not apply to actions commenced pursuant to Section 3210 of this code.

Application: Oil and Gas Lien Act; Improvement Act of 1911

3266. (a) This title does not supersede the Oil and Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50), Title 4, Part 3, of the Code of Civil Procedure, and the provisions of that act shall govern those transactions to which it applies rather than the provisions of this title.

(b) This title does not supersede Chapter 12 (commencing with Section 5290), Part 3, Division 7, of the Streets and Highways Code, and the provisions of that chapter shall govern those transactions to which it applies rather than the provisions of this title.

No Right of Action

3267. Nothing contained in this title shall be construed to give to any person any right of action on any original contractor's private or public work payment bond described in Chapter 6 (commencing with Section 3235) or Chapter 7 (commencing with Section 3247), unless the work forming the basis for his claim was performed by such person for the principal on such payment bond, or one of his subcontractors, pursuant to the contract between the original contractor and the owner.

Nothing in this section shall affect the stop notice rights of, and relative priorities among, architects, registered engineers, or licensed land surveyors and holders of secured interests on the land.

EXECUTION ON MONEYS OWED BY PUBLIC AGENCIES**Code of Civil Procedure Sections****Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity*****Definitions***

708.710. As used in this article:

(a) "Local public entity" means any public entity other than the state.

(b) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) "State" means the State of California.

(d) "State agency" means a state office, officer, department, division, bureau, board, commission or agency claims against which are paid by warrants drawn by the Controller.

Offset; Public Employee's Earnings

708.720. (a) If a public entity owes money to the judgment debtor, the obligation of the public entity may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided by (1) this article, (2) Chapter 5 (commencing with Section 706.010) (wage garnishment), or (3) Article 5 (commencing with Section 708.410) (lien in pending action or proceeding).

(b) The earnings of a public officer or employee shall not be withheld pursuant to this article. Except as expressly provided by law, the earnings of a public officer or employee may be withheld for the payment of a money judgment only pursuant to Chapter 5 (commencing with Section 706.010).

(c) If the obligation of a public entity to pay money to the judgment debtor is the subject of a pending action or special proceeding, the procedure in this article does not apply. The payment of the obligation that is the subject of the pending action or special proceeding may be applied to the

satisfaction of the money judgment against the judgment debtor only in the manner provided in Article 5 (commencing with Section 708.410).

Filing of Abstract

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

(c) If the judgment is for support and related costs and money is owing and unpaid to the judgment debtor by a state agency, including, but not limited to, money owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, and the district attorney is enforcing the support obligation pursuant to Section 11475.1 of the

Welfare and Institutions Code, the claim may be submitted as follows: The district attorney may file the affidavit referred to in subdivision (a) without filing an abstract or certified copy of the judgment. In lieu thereof, the affidavit shall also state that an abstract of the judgment could be obtained. Where there is more than one judgment debtor, the district attorney may include all the judgment debtors in a single affidavit. Separate affidavits need not be submitted for each judgment debtor. The affidavit need not on its face separately identify each judgment debtor or the exact amount required to satisfy the judgment, so long as it incorporates by reference forms or other automated data transmittals, as required by the State Department of Social Services, which contain this information. Affidavits submitted pursuant to this subdivision by the district attorney shall meet the standards and procedures prescribed by the state agency to which the affidavit is submitted, except that those affidavits submitted with respect to moneys owed and unpaid to the judgment debtor as a result of a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, shall meet the standards and procedures prescribed by the Franchise Tax Board.

In serving the notice required by subdivision (b), the Director of the State Department of Social Services or his or her designee may act in lieu of the judgment creditor as to judgments enforced under this division.

(d) If the judgment is for child, spousal, or family support and related costs and money is owing and unpaid to the judgment debtor by a state

agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or as a result of the judgment debtor's winnings in the California State Lottery, the judgment creditor may file with the court an abstract or a certified copy of the judgment ordering the payment of child, spousal, or family support, together with a request that the court issue a Notice of Support Arrearage, as provided in Section 708.780, to which any personal income tax refunds and lottery winnings owed the judgment debtor by the State of California will be subject. The request shall be accompanied by an affidavit, signed under penalty of perjury, which shall state that the judgment creditor desires the relief provided by this subdivision and shall state the exact amount then required to satisfy the judgment. In addition, the affidavit shall specify the beginning and ending dates of all periods during which the arrearage for support occurred, specify the arrearage for each month, and state that the support is at least 90 days overdue or is overdue in an amount equal to 90 days of support. It shall also certify that the child or children are not recipients, and during the period for which payment is requested, were not recipients, of Aid to Families with Dependent Children and there was no assignment to a state or county agency of support and shall certify on information and belief that there is not current or past action by a district attorney pending for support or support enforcement on the judgment creditor's behalf.

The request shall have attached a proof of service showing that copies of the request, the affidavit, and the

abstract or certified copy of the judgment ordering the payment of support have been served on the judgment debtor and the district attorney of the county in which the support judgment is entered. Service shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

This subdivision does not apply in any instance in which a district attorney initiated or participated as counsel in the action for support or if support is required to be paid through a district attorney's office.

The State Department of Social Services shall, upon request, inform the Legislature of the use and effect of this subdivision on or before December 31, 2000.

This subdivision shall become operative on January 1, 1996, and shall become inoperative on December 31, 2000.

(e) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

Proper Service of State Agencies

708.740. (a) Except as provided in subdivision (e), if money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller. Where the affidavit is prepared under subdivision (c) of Section 708.730, the affidavit shall be filed with the State Department of Social Services, and no abstract need be filed. Filing of the affidavit with the department shall be sufficient to require the Controller to transfer the funds claimed by the judgment debtor, notwithstanding that

the claim of the judgment debtor has been filed with another state agency.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) Except as provided in subdivisions (d) and (e), to discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

(d) Where an affidavit stating the existence of a judgment for support has been submitted to the State Department of Social Services, pursuant to subdivision (c) of Section 708.730, to discharge the claim of a judgment debtor, the Controller shall direct payment to the county agency designated by the district attorney in his or her affidavit.

(e) Where the judgment is for support and the money owed is for lottery winnings or a refund of overpayment of tax, penalty, interest, or interest allowable with respect to an overpayment under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, and the support obligation is not

being enforced pursuant to Section 11475.1 of the Welfare and Institutions Code, the judgment creditor may file the abstract or certified copy of the judgment with the district attorney of the county in which the support judgment is entered or registered. The district attorney shall then file the claim of the judgment creditor pursuant to subdivision (c) of Section 708.730. When funds are received by the district attorney he or she shall discharge any claim of the judgment debtor by forwarding those sums to the clerk of the court pursuant to subdivision (c) of this section. Any and all notices otherwise required of a judgment creditor or the clerk of the court, and any litigation to enforce rights under this subdivision shall be the responsibility of the judgment creditor, the same as if service had been directly on the Controller without the intervention of the district attorney.

(f) Where the claim of the judgment debtor is less than ten dollars (\$10) and the claim of the judgment creditor arises under an affidavit filed pursuant to subdivision (c) of Section 708.730, the Controller may disregard the claim of the judgment creditor and forward any and all sums due to the judgment debtor. In the event that there is more than one claimant for a refund, the Franchise Tax Board shall have discretion in allocating the overpayment among claimants.

(g) Should two or more district attorneys submit claims on behalf of a judgment creditor, the Controller in his or her discretion may select which claim or claims he or she shall honor.

(h) Any claims which are honored in behalf of a judgment creditor shall be considered as refunds of tax overpayments to the judgment debtor.

(i) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

Service on Other Public Entities

708.750. If money is owing and unpaid to the judgment debtor by a public entity other than a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the auditor of the public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor. To discharge the claim of the judgment debtor, the auditor or other official shall (1) deposit with the court by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

Lottery Prize Paid in annual Installments; Lien of Judgment creditor; procedures for Continued Effect; Expiration

708.755. (a) Upon compliance with this section, the lien of a judgment creditor pursuant to this article is created against a lottery prize to be paid in annual installments and shall continue in force and effect until the judgment is paid or expires, whichever occurs first. For the lien to continue in effect, the judgment creditor shall do all of the following:

(1) Commencing with the second installment against which the judgment lien creditor asserts its lien, annually file with the lottery an affidavit stating that the judgment has not been satisfied and the amount of the remaining unsatisfied judgment, including interest and costs, if any. This affidavit shall be filed with the lottery not less than 45 days, nor more than 90 days, before the annual

payment due date on the prize that is the subject of the judgment lien.

(2) If the judgment lien is renewed, file with the lottery a certified copy of the renewal application, as authorized in this code not less than 45 days, nor more than 90 days, before the annual payment due date on the prize that is the subject of the judgment lien, in order for the judgment lien to be effective in continuing the existing judgment lien against the annual lottery prize payments.

(b) If the judgment lien creditor fails to file the annual statement, renewal of judgment, or renewal of abstract, the lien shall expire. Expiration of a lien for failure to comply with this section shall not preclude the judgment creditor from commencing a new procedure under this article to enforce the judgment, to the extent that the judgment otherwise continues to be enforceable under applicable law.

Public Works Contracts

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Section 3181 of the Civil Code.

Notice of Deposit

708.770. (a) Except as provided in subdivision (g), promptly after deposit with the court by the public entity, the court clerk shall cause a notice of deposit to be served on the judgment debtor. Service shall be made personally or by mail.

(b) Within 10 days after service of the notice of deposit pursuant to subdivision (a), the judgment debtor who claims an exemption shall do both of the following:

(1) File with the court a claim of exemption and a notice of motion for an order determining the claim of exemption. The claim of exemption shall include all of the matters set forth in subdivision (b) of Section 703.520.

(2) Serve on the judgment creditor a copy of the notice of motion, a copy of the claim of exemption, and a notice of hearing on the motion. Service shall be made personally or by mail.

(c) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(d) Within 10 days after the judgment creditor is served under subdivision (b), the judgment creditor who opposes the motion shall do both of the following:

(1) File with the court a notice of opposition to the claim of exemption. The notice of opposition to the claim of

exemption shall be executed under oath and shall include all of the matters set forth in Section 703.560.

(2) Serve on the judgment debtor a copy of the notice of opposition to the claim of exemption. Service shall be made personally or by mail.

(e) Subdivisions (a) to (d), inclusive, of Section 703.580 and Sections 703.590 and 703.600 apply to a claim of exemption made pursuant to this section.

(f) The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

(g) In lieu of service of the notice of deposit described herein, where a state agency has been served with an affidavit pursuant to subdivision (c) of Section 708.730 and has presented the claim of the judgment creditor to the Controller pursuant to subdivision (a) of Section 708.740, the state agency shall cause a notice of deposit to be sent to the judgment debtor instructing the judgment debtor to file any and all requests for relief with the district attorney who filed the affidavit, or the court clerk if the seizure arises under subdivision (e) of Section 708.740. Except in those cases arising under subdivision (e) of Section 708.740, the judgment debtor shall file the request for relief with the district attorney within 15 days after service of notice from the public agency, or the judgment debtor shall be deemed to have waived any claim he or she might otherwise have. If the matter cannot be resolved with the district attorney, the district attorney shall so advise the judgment debtor and the judgment debtor shall then be authorized to commence proceedings under this section or any other appropriate provision of law. The notice from the district attorney shall for any limitation have the same effect as a notice of deposit under subdivision (a). Service of any notice or request under this

subdivision shall be made personally or by mail.

Claims arising from the filing of an abstract or certified copy of a judgment, under subdivision (e) of Section 708.740 shall be governed by the procedure and limitations set forth in subdivisions (a) through (f).

Payment to the Judgment Creditor

708.775. After the expiration of the period allowed for claiming an exemption under Section 708.770 if no exemption has been claimed, or after the determination of the claim of exemption if an exemption is claimed within the period allowed for claiming the exemption under Section 708.770, the court shall pay the nonexempt portion of the money deposited to which the judgment creditor is entitled to the judgment creditor and the balance thereof, if any, to the judgment debtor, unless some other disposition is required by law.

Lien Created; Claims for Overpayment

708.780. (a) Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

(b) When an affidavit is filed pursuant to subdivision (c) of Section 708.730, it shall apply to all claims for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, which the judgment debtor subsequently claims during a period one year after filing of the affidavit, or October 1 of the year following the filing of the affidavit,

whichever occurs later, the same as if claims for these overpayments were filed by the judgment debtor with the appropriate state agency on the date the affidavit was filed.

(c) When a request is filed pursuant to subdivision (d) of Section 708.730 with the court, the clerk of the court shall issue a Notice of Support Arrearage. The clerk of the court shall issue the notice 30 days after the request was filed pursuant to subdivision (d) of Section 708.730 without a hearing if no objection has been raised by the judgment debtor pursuant to this subdivision. If an objection has been raised, the notice shall not be ordered until after a hearing. The notice shall contain the name of the person ordered to pay support and his or her social security number; the amount of the arrearage determined by the court; whether the arrearage is for child, spousal, or family support and the specific combination thereof; a statement of how the recipient may challenge the statement of arrearage; and the name, address, and social security number of the person to whom the arrearage is owed. Upon the clerk of the court issuing the Notice of Support Arrearage, a copy of the request, the affidavit, and the notice shall be served by the party who requested the court to issue the Notice of Support Arrearage upon the person ordered to pay support and the Controller. Service may be personal, in accordance with Section 1011, or by mail, in accordance with Section 1013. Service upon the Controller shall be at the Controller's office in Sacramento.

The judgment debtor may object to the request or affidavit upon any of the following grounds: (1) there is an error in the amount of the arrearage stated in the affidavit; (2) the alleged judgment debtor is not the judgment debtor from whom the support is due; (3) the amount to be intercepted exceeds that allowable under federal law; (4) a

default in payment of the support for 30 days has not occurred; or (5) other necessary factual allegations contained in the affidavit are erroneous.

Upon receipt of the Notice of Support Arrearage, the Controller shall take reasonable measures to deduct from any personal income tax refunds and lottery winnings owed and processed for payment to the judgment debtor and deposit with the court a warrant, subject to Sections 708.770 and 708.775, with service of a copy of the warrant upon the local child support agency of the county in which the support judgment is entered, payable to the court, the amount due the judgment creditor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent, and pay the balance thereof, if any, to the judgment debtor. At any hearing pursuant to Section 708.770, the judgment debtor may challenge the distribution of these funds on exemption or other grounds, including, but not limited to, an allegation that the judgment has been satisfied or that service was improper. The notice shall not apply to any money which is exempt by law from execution. The Controller shall determine the cost of enforcing the notice and may establish a notice filing fee not to exceed five dollars (\$5).

Service of the Notice of Support Arrearage and of the request and affidavit pursuant to this subdivision creates a lien on the money owing and unpaid to the judgment debtor which shall become effective 30 days following service upon the Controller. This notice shall remain in effect for four years from the date of its issuance or until the arrearage for which the notice was issued is satisfied, whichever occurs first.

Any person who files a request with the court to issue a Notice of Support Arrearage pursuant to subdivision (d) of Section 708.730 shall notify the court and the Controller of any satisfaction of the arrearage after the Notice of Support Arrearage has been issued by the clerk of the court. The notice to the court and the Controller shall be filed with the court and the Controller and served upon the local child support agency of the county in which the support judgment is entered within 30 days of the satisfaction or discharge and shall show a partial or full satisfaction of the arrearage or any other resolution of the arrearage.

Upon filing and service, the Notice of Support Arrearage shall be of no force and effect.

The State Department of Social Services shall, upon request, inform the Legislature of the use and effect of this subdivision on or before December 31, 2001.

This subdivision shall become operative on January 1, 1996, and shall become inoperative on December 31, 2001.

(d) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

Filing Fees

708.785. (a) The judgment creditor upon filing the abstract or certified copy of the judgment and the affidavit shall pay a fee of six dollars (\$6) to the public entity with which it is filed.

(b) Fees received by the state under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of collection under this article.

Limitation on Liability

708.790. No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by

the abstract or certified copy of the judgment together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word "office" as used in this section does not include any branch or subordinate office located in a different city.

Exceptions

708.795. Except as to sums due and unpaid under a judgment for support, nothing in this article authorizes the filing against an overpayment of tax, penalty, or interest, or interest allowable with respect to an overpayment, under Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code or under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

Note: Section 5 of Chapter 1010, Statutes of 1983, provides:

SEC. 5. Any state agency that incurs administrative costs because of the requirements of this act shall seek any federal funds available for reimbursement of those costs. To the extent that reimbursement is unavailable, any such agency may impose a fee to cover the reasonable costs of its administrative expenses incurred pursuant to this act.